

P.O. Box 10246
Birmingham, AL 35202

Telephone: 205-849-1300
Fax: 204-849-1322



January 13, 2012

Mr. Douglas C. McCurry, Chief
North Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
United States Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street
Atlanta, Georgia 30303-8960

Re: RCRA Compliance Evaluation Inspection
ABC Coke Division, Drummond Company, Inc.
EPA ID# ALD000823179

Dear Mr. McCurry:

Enclosed is ABC Coke's response to the November 30, 2011 EPA Compliance Evaluation Inspection Report relating to the inspection of the ABC Coke facility on August 30-31, 2011. Please note that ABC is providing a copy of this response to Paula Whiting. Should you or Ms. Whiting have any questions, please call me at (205) 849-1342.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Mark Poling'.

W. Mark Poling
Manager, Engineering & Environmental Compliance
ABC Coke

cc. James K. Burgess, ADEM
Paula Whiting, EPA



A Division of Drummond Company, Inc.

**RESPONSE OF ABC COKE
TO
EPA NOVEMBER 30, 2011 REPORT OF AUGUST 30-31, 2011 RCRA
COMPLIANCE EVALUATION INSPECTION (CEI)**

ABC Coke Division, Drummond Company, Inc. (hereinafter, “ABC” or “ABC Coke”), EPA ID# ALD000823719, provides the Alabama Department of Environmental Management (“ADEM” or the “Department”) and the United States Environmental Protection Agency (“EPA”) with the following response¹ to EPA’s November 30, 2011 RCRA CEI Report:

Introduction and Regulatory Context

Congress, in enacting the Resource Conservation and Recovery Act (“RCRA”), found that —

- (1) millions of tons of recoverable material which could be used are needlessly buried each year;
- (2) methods are available to separate useable materials from solid waste; and
- (3) the recovery and conservation of such materials can reduce the dependence of the United States on foreign resources and reduce the deficit in its balance of payments.

42 U.S.C. § 6901(c). Congress also found with respect to energy, that—

- (1) solid waste presents a potential source of solid fuel, oil, or gas that can be converted into energy;
- (2) the need exists to develop alternative energy sources for public and private consumption in order to reduce our dependence on such sources as petroleum products, natural gas, nuclear and hydroelectric generation; and
- (3) technology exists to produce useable energy from solid waste.

¹ This response is made without waiver of any rights, objections, defenses, or remedies and without admission of any violation of any law or regulation.

42 U.S.C. § 6901(d). The objectives of RCRA specifically include “promoting...resource recovery” and “establishing a *cooperative effort among* the Federal, State, and local *governments and private enterprise* in order to recover valuable materials and energy from solid waste.” 42 U.S.C. § 6902(a)(10)-(11)(emphasis added). It is difficult to imagine an operation that does as much to achieve those objectives as the by-products operation at ABC Coke and the recycling and recovery managed there through the Kipin Process and the KMAC Yard.

Subtitle C of RCRA governs the regulation of hazardous waste, and the definition of “solid waste” is crucial to understanding the regulations: before a material can be classified as a hazardous waste, it must first be a “solid waste.” See <http://www.epa.gov/osw/hazard/dsw/index.htm> (Last updated on August 10, 2011); see also 42 U.S.C. § 6903(5)(defining “hazardous waste”).² “Recycled materials are specifically excluded from the definition of solid waste.” See <http://www.epa.gov/osw/hazard/recycling/regulations.htm> (last updated on July 27, 2011). Coke by-product wastes, when recycled as they are at ABC Coke, are excluded from the definition of “solid waste” and are therefore not subject to RCRA Subtitle C regulation:

(a) *Materials which are not wastes.* The following material are not solid wastes for purposes of this part:

* * *

²“Solid waste” is defined in § 261.2 of the RCRA regulations (40 C.F.R. § 261.2). In the ADEM regulations, the definition is found in r. 335-14-2-.01(2)(a): “A solid waste is any discarded material that is not excluded by 335-14-2-.01(4)(a)....” See also 42 U.S.C. § 6903(27)(“solid waste” defined).

(10) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-product processes that are hazardous only because they exhibit the Toxicity Characteristic (TC) specified in 40 CFR 261.24 when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned upon there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or tar recovery or refining processes, or mixed with coal tar.

See 40 C.F.R. § 261.4(a)(10). ADEM's essentially verbatim counterpart to § 261.4(a)(10) is ADEM Admin. Code r. 335-14-2-.01(4)(a)10.

In addition to the regulations, ABC long ago requested and received from ADEM an interpretation of the scope of the coke plant waste exclusion. See May 30, 1996 letter from Steven O. Jenkins, Chief, RCRA Compliance Branch, Land Division, ADEM to S. Morgan, ABC Coke (copy attached as Exhibit A). ADEM determined that r. 335-14-2-.01(4)(a)10's

exclusion does not limit exempted coke plant materials to recycling only in the system from which it was generated. Provided the coke plant material does not come in contact with the land, it is not a solid waste and can be transported from one facility to another if its final destination is the return to a coke oven as hydrocarbon feedstock.

(See Exhibit A.) ABC handles all of its coke by-product material in accordance with the regulations.

Response to the Specific Sections of the CEI Report³

1) - 7) ABC does not dispute the information recorded in sections 1) - 7) of EPA's report.

8) Facility Description

The "Facility Description" section of the report is basically accurate except that (a) the "Kipin process" at ABC receives tar decanter sludge for recycling from the coke by-products plant and from outside facilities in Ohio, New Jersey, and Alabama, *and* from California, Texas, Maryland, and Florida; and (b) ABC does not generate "wastes which include EPA Waste Code[]...D008 [lead]," as the report states.

9) Previous Inspection History

The CEI report omits a November 1, 1995 RCRA Facility Hazardous Waste Inspection by ADEM, which had as its purpose to determine the facility's compliance with all applicable standards of Division 14 of the ADEM Admin. Code: "During this inspection no violations of the above-mentioned Code were observed." (December 13, 1995 letter from G. Dave Davis, Chief, Northern Section, RCRA Compliance Branch, Land Division, ADEM to S. Morgan, ABC Coke.)

10) Findings

Material Handling

To some degree, the CEI report correctly summarizes the relevant material handling operation. However, the CEI report incorrectly states, "Ten silos located in the Material Handling area are used to store coal, breeze and non-solid wastes [sic] (Picture

³ Each numbered item below corresponds to the similarly numbered section in EPA's CEI report.

7).” The silos do not store “wastes,” including “non-solid wastes.” The silos all contain process-related feedstock. The ditches referenced in conjunction with Picture 7 are simple roadside ditches, not “ditches to capture runoff coal in the stormwater.” (See photograph attached as Exhibit B.) None of the coal or other carbon materials are “waste.”

KMAC Yard

Up to a point, the EPA report correctly describes the KMAC Yard and the functions provided by KMAC Services. KMAC Services *is* an independent contractor which collects the waste streams of non-hazardous materials from around the facility. KMAC determines whether non-carbon “waste” is recyclable or hazardous. If it is *not* recyclable or hazardous, *then* it is sent to a landfill. Additionally, carbon, because of its BTU value, is *not* “waste,” and it is *not* discarded. (Compare definition of “waste,” ADEM Admin. Code r. 335-14-1-.02(1)(a)(303).) All carbon is recycled for sale or for recharging to the coke ovens by several processes.

The EPA report points at what it terms “plant trash (i.e., two partial[ly] filled aerosol cans) on top of the carbon waste piles”⁴ in the KMAC Yard and suggests that this evidences an “apparent violation” of ADEM Admin. Code R. 335-14-2-.01(2) [40 C.F.R. § 262.11]. However, ABC Coke is not now and was not at the time of the CEI in violation of ADEM Admin. Code r. 335-14-2-.01(2) [40 C.F.R. § 262.11]. This so-called “plant trash”—that is, the two aerosol cans assumed by the report writer to be “partial[ly]

⁴ Again, no carbon is “waste.”

filled”—were not discarded by ABC and were subject to further determination prior to disposal by KMAC Services.

Pre-Treatment Pond

The CEI report correctly recognizes that “storm water ditches beside the coke and coal stockpiles....are used to collect the runoff coal fines.” Then, the “storm water and fines flow into a Pre-Treatment Pond where the fines settle out and are removed.” The report correctly records that

Any oil releases or sheens from the...storm water runoff on the facility are captured in the Pre-Treatment Pond and skimmed. Any oil releases or sheens that bypass the Pre-Treatment are captured with a boom in the Surface Impoundment. The booms are recycled by the Kipin Process.

November 30, 2011 CEI, at 4. However, the report incorrectly states that sprinkler runoff is also collected in the Pre-Treatment Pond. (See also Kipin Process herein.)

Surface Impoundment

It is correct that the clay-lined Surface Impoundment is directly across from the Pre-Treatment Pond and that an inlet pipe releases storm water from the Pre-Treatment Pond into the Surface Impoundment.⁵ However, ABC Coke is not now and was not at the time of the CEI in violation of ADEM Admin. Code r. 335-14-2-.01(2) [40 C.F.R. § 262.11]. The coal fines in the Surface Impoundment are not a “solid waste,” and therefore are not a “hazardous waste.” Rather, they are, as is at least partially recognized

⁵ It is *not* correct that storm water is discharged from the Surface Impoundment to Five Mile Creek after “72 hours” retention time.

in the Pre-Treatment Pond section of the CEI report, reused as product, Kipin feedstock, or stockpile base.

As is clear in both r. 335-14-2-.01(2) and 40 C.F.R. § 262.11, a “hazardous waste” determination is required only where a “solid waste” has been generated. Coke by-products waste is *not* “solid waste.” Coke by-products are excluded from the definition of “solid waste.” See ADEM Admin. Code r. 335-14-2-.01(4)(a)10; 40 C.F.R. § 261.4(a)(10).

Biological Wastewater Treatment Plant (WWTP)

It is correct that Calgon Carbon removes the deactivated carbon from the WWTP. However, the CEI report fails to note correctly that the sludge from the WWTP is recycled on site, and all of the Calgon deactivated carbon is recycled to the coke process. Carbon is not shipped back to Calgon Carbon.

Main Maintenance Shop

The Main Maintenance Shop has one of three parts washers supplied by Safety Kleen Systems, Inc., but ABC Coke is not now and was not at the time of the CEI in violation of *either* ADEM Admin. Code r. 335-14-2-.01(7)(a)(2) [40 C.F.R. § 261.7(a)(2)] *or* ADEM Admin. Code r. 335-14-2-.01(2) [40 C.F.R. § 262.11].

Although the inspection team apparently “observed absorbent on top of an oily substance surrounding an equipment base (Picture 34),” the report fails to mention what is “apparent from Picture 34, that the oil leak around the equipment was contained on an *impervious* concrete floor and controlled with oil dry. The report also fails to note that the oil dry is then recycled through Kipin. Furthermore, there are no “containers”

observed in the report other than the “KMAC scrap bin with discarded aerosol cans (Pictures 35-36).” (There are certainly no inner liners removed from a container implicated.) It does not make economic or common sense that aerosol cans that were not empty would be discarded, nor does the CEI report indicate whether and by what means it was determined that the cans were not empty. (Note also that Picture 36 indicates the cans are “spent.”) In any event, the aerosol cans are in the KMAC scrap bin for waste determination by KMAC as part of its process.

Container Building

Up to a point, the EPA report correctly describes the Container Building. All of the containers referred to in this section of the CEI report are used to catch and transfer used oil to Kipin, which then recycles the oil and residues, including those treated with oil dry. All of the containers are inside the containment area during “storage” and use. Nevertheless, ABC will be reviewing procedures at the Container Building to make certain that used oil is always stored in closed containers during storage (except when necessary to add or remove used oil), that all containers are in good condition, and that such containers are labeled or otherwise clearly marked with the words “Used Oil.”

Kipin Process Area

ABC Coke is not now and was not at the time of the CEI in violation of ADEM Admin. Code r. 335-14-6-.03(2) [40 C.F.R. § 265.31] because the plant is maintained and operated to minimize the possibility of fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or constituents of such—to air, soil, or surface water that could threaten human health or the environment. Picture 62—captions “Kipin

Process Area discarded material for KMAC”—does not show, as the CEI report suggests, “discarded materials [literally] on the ground.” Rather, the materials were on “the concrete pad in the Kipin process area [that] is surrounded on three sides by walls constructed of concrete blocks and covered in 1/2-inch steel seam welded sheets.” (CEI report, at 7.) The CEI report correctly recognizes that “[t]he base or floor of the pad is eighteen inches of impermeable concrete with a six-inch channel poured in concrete (Pictures 55-56, 58-60).” The thickness of this pad exceeds RCRA requirements by twenty-five percent (25%), and, because it is impermeable, the pad does not allow contaminants to reach “the ground.”

The CEI report is in error, however, in its discussion of the so-called “gaps” or openings” at the welds. The side wall steel material is 1/2 inch thick sheets measuring 4 feet by 10 feet that are full-welded up to eight feet high, which is *above* the process line (as is shown in Pictures 55, 58, and 59). The sheets are also full seam welded to a 9-inch channel and have a full seam base weld to the 1/2 inch steel floor that sits on top of the 18” impervious concrete pad. There is no actual “gap” or “opening” through which a release to the ground can occur. The weld seams below the process line were observed by Ms. Whiting (EPA), Mr. Burgess (ADEM), and Mr. Poling (ABC) during the inspection, and the welds were intact.

Engineering drawings of the Kipin recycling center and containment area, which show its specifications and construction, were provided to the Department by email from Bill Osborn (of ABC) to James Burgess (of ADEM) on January 3, 2012. The containment complies with the “sealed” and “welded” requirement described in EPA’s

available in several locations, but the inspection team did not ask to see them. A copy of ABC's Integrated SPCC/SWBMP plan was submitted to ADEM by letter of December 21, 2011.

ABC also maintains and has submitted a copy of its contingency plan and all revisions in accordance with ADEM Admin. Code r. 335-14-6-.04(4) and the federal Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. §§ 11001 et seq.

ABC has attempted to obtain copies of certain hazardous waste manifests from Safety Kleen, and evidence of these efforts were provided to the Department by letter of December 21, 2011.

Training

ABC personnel are professionally trained in accordance with legal requirements regarding environmental compliance. The biography of Lori Purnell, MPH, PE, who conducts yearly training for ABC including regarding substances and emergency action was provided to the Department by letter of December 21, 2011.

Exhibit A

ADEM

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT



Rob James, Jr.
Governor

James W. Warr
Director

(334) 271-7700

1751 Cong. W. L.
Dickinson Drive
Montgomery, AL
36109-2608

Mailing Address:
PO Box 301463
Montgomery, AL
36130-1463

FAX: (334)
Admin: 271-7950
Air: 279-3044
Land: 279-3050
Water: 279-3051
Sp Proj: 213-4399
Field Ops: 272-8131
Backup: 270-5612

Field Offices:

110 Vulcan Road
Birmingham, AL
35209-4702
(205) 942-6168
FAX: 941-1603

400 Well St, N.E.
P.O. Box 953
Decatur, AL
35602-0953
(205) 353-1713
FAX: 340-9359

2204 Perimeter Rd
Mobile, AL
36615-1131
(334) 450-3400
FAX: 479-2593

CERTIFIED MAIL P 592 615 360
RETURN RECEIPT REQUESTED

May 30, 1996

Mr. Steve Morgan
Environmental Engineer
ABC Coke
P.O. Box 10246
Birmingham, AL 35202

Dear Mr. Morgan:

Re: Interpretation of coke plant waste exemption
ABC Coke
USEPA ID# ALD 000 823 179


Under the specific exclusion in the ADEM Administrative Code, Rule 335-14-2-.01(4)(a)10, states that all listed coke industry hazardous wastes as well as any wastes from coke plant by-product processes that are hazardous strictly because they exhibit the Toxicity Characteristic specified in Rule 335-14-2-.03(5) are not to be classified as solid wastes as long as they are recycled "to coke ovens". This exemption is valid only if the material is restricted from contact with the land at all times from the point of generation to the point of reentry into a coke oven.

It is the Department's opinion that this exclusion does not limit exempted coke plant material to recycling only in the system from which it was generated. Provided the coke plant material does not come in contact with the land, it is not a solid waste and can be transported from one facility to another if its final destination is the return to a coke oven as hydrocarbon feedstock.

ABC Coke has notified the Department that they wish to receive exempted coke plant material, and recharge this material into their coke ovens. It is our opinion that this falls within the boundaries of the coke plant hazardous waste exclusion.

If you have any questions about this matter, please call Mr. Chad Wilson at (334) 271-7756.

Sincerely,


Steven O. Jenkins, Chief
RCRA Compliance Branch
Land Division

CTW/mw: abcexemp.doc
File: CESQG / ABC Coke



Exhibit B

